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Docket Unit
California Energy Commission
1516 9th Street, MS-4
Sacramento, California 95814

Re: Docket No. 03-CRS-01: Comments of the Joint Parties Interested in Distributed Generation/Distributed Energy Resources on Proposed Regulations -- Qualified Departing Load CRS Exemptions

Ladies and Gentlemen:

The Joint Parties Interested in Distributed Generation/Distributed Energy Resources[1] (Joint Parties) appreciate the opportunity to provide comments on the regulations proposed by the California Energy Commission (CEC) to implement the portions of California Public Utilities Commission (CPUC) Decision No. 03-04-030 (as modified by Decision 03-04-031) (the Decision) that address assessment and tracking of cost responsibility surcharge (CRS) exemptions for customer generation departing load customers.

In general, the Joint Parties believe the proposed regulations effectively capture the relevant provisions of the Decision. However, there are several areas the Joint Parties believe require further clarification. Accordingly, the Joint Parties provide the following comments with the goals of ensuring consistency between the CEC's proposed regulations, the Decision and applicable laws, and that the proposed regulations do not pre-judge the outcome of certain outstanding Decision-related issues currently pending before the CPUC.

Proposed Section 1395.2(a)

Proposed Section 1395.2(a) sets forth the information to be included on the Departing Load CRS Information Form, which is to be used to determine eligibility for a CRS exemption. Proposed Section 1395.2(a) presently requires that the capacity of a customer generation unit be supplied. The Joint Parties agree this information is necessary for purposes of determining eligibility for certain CRS exemption categories.[2] The Joint Parties recommend that Section 1395.2(a) be

[1] The Joint Parties are comprised of Capstone Turbine Corporation, Chevron Energy Solutions, Cummins Cal-Pacific, Cummins West, Inc., Hess Microgen, Ingersoll-Rand, next>edge, Inc., Northern Power Systems, Inc., RealEnergy, Inc., Stewart & Stevenson, and Solar Turbines, Inc.

[2] As discussed below, the Joint Parties also suggest the proposed regulations be revised to clarify that *net* generating output capacity, versus gross capacity or nameplate rating, be provided.

revised to also include the anticipated departing load level, as that information is required to quantify use of exemptions under the cap, pursuant to the Decision.

The Decision states "we will apply this cap to all [customer generation] *departing load*." (D.03-04-030, p. 53 (emphasis added). Also see Ordering Paragraph 10: "Exceptions adopted in today's decision as provided in Ordering Paragraphs 8 and 9, shall expire when the cumulative total of customer generation *departing load* eligible under those Ordering Paragraphs exceeds 3,000 MW . . . ." (Emphasis added.)) As provided in the Decision and Proposed Section 1395.1(m), "departing load" means the portion of utility customer's load which the customer replaces with customer generation. (D.03-04-030, p. 2.)

Based on the foregoing, it is clear that even though eligibility for certain CRS exemptions is based on generating unit capacity, the tracking of exemptions for purposes of the cap is measured by level of departing load. Thus, adding a requirement that customers provide the level of departing load is necessary for the CEC to implement its role under the Decision.

Proposed Section 1395.3(b)(2)(A)

Proposed Section 1395.3(b)(2)(A) provides that an Electric Utility is to automatically approve Full CRS Exemptions if a customer is "eligible for funding" under the Self-Generation Incentive Program "up to 1 megawatt". This language deals with two issues currently pending before the CPUC.

Eligible for Funding Requirement

The proposed regulations imply that eligibility for the Self-Generation Incentive Program-based CRS exemptions is dependent upon receipt of funding under that Program. As explained in the Joint Parties' protest of PG&E Advice Letter 2375-E and their July 21, 2003 comments on the draft CRS regulations initially proposed by the CEC, the Joint Parties believe such interpretation of the Decision is incorrect. The Joint Parties suggest that the "eligible for funding" requirement in proposed Section 1395.3(b)(2)(A) be revised to provide that projects that meet the eligibility requirements for the Self-Generation Incentive Program are eligible for the CRS exemptions, regardless of whether funding is actually received.

The Joint Parties believe that such a revision is necessary to reflect the intent of the CPUC. D.03-04-030 uses several different terms: at page 45 it provides that clean customer generation is eligible for CRS exemptions if it is *eligible for the CPUC's Self-Generation Incentive Program*; in Conclusion of Law 7 it refers to eligibility for *CPUC Self-Generation funding*; and in Ordering Paragraph 7, it refers to *eligibility for financial incentives* from the CPUC's Self-Generation Program.

It is possible that a project could be *eligible for* the CPUC's Self-Generation Program or financial incentives, yet not *receive* funding. For example, Program funds may be exhausted for a particular year, incentive reservation limits may be met, or a project may be fully funded by

another state, regional or local entity. The Joint Parties do not believe the CPUC intended for systems that otherwise meet Program eligibility criteria to be subject to CRS simply because they do not actually receive funding from the Program. Thus, the Joint Parties propose that the clean customer generation exemption be modified to clarify that systems that are eligible for the CPUC's Self-Generation Incentive Program are eligible for CRS Exemptions.

The Joint Parties believe that an Electric Utility could readily determine whether a system is eligible for the Self-Generation Incentive Program. For example, CPUC Decision 09-08-037 sets out the criteria for the Program. Those criteria include limits on project size, types of eligible technologies, and warranty requirements, depending on the incentive category. An affidavit or declaration attesting that a system meets these requirements could serve to demonstrate that a system meets the eligibility criteria. Although other permits, such as air and building permits, and an interconnection agreement with the utility are required before a system may actually start operating, these are not "eligibility criteria" under the Self-Generation Incentive Program. In fact, in Decision 02-02-026, the CPUC rejected making due diligence requirements part of the process for establishing eligibility under the SGIP, finding that such requirements could create unnecessary obstacles to some projects. (D.02-02-026, p. 15.)

The CPUC has not yet issued a resolution addressing the utilities' advice letters and protests thereto and clarifying this issue. Until it does, it is premature to assume in formal regulation that the CPUC will conclude CRS exemption eligibility must depend on receipt of Self-Generation Incentive Program funding. Accordingly, the Joint Parties recommend that Proposed Section 1395.3(b)(2)(A) be revised to eliminate the words "funding under." This subdivision as revised would be flexible enough to accommodate any CPUC determination clarifying CRS exemption eligibility based on the Self-Generation Incentive Program.

1 Megawatt Limit

Proposed Section 1395.3(b)(2)(A) provides that Full CRS Exemptions will automatically be approved for customers eligible for the Self-Generation Incentive Program, "up to 1 megawatt". It is not clear if this Proposed Section means that only projects up to 1 MW shall be exempt, or, consistent with the Self-Generation Incentive Program, the first MW of projects up to 1.5 MW shall be exempt.

The Joint Parties believe that, consistent with the Self-Generation Incentive Program, the CPUC intended in the Decision that the first MW of a project up to 1.5 MW be exempt from CRS. The Joint Parties articulated this position in their comments on SCE's Advice Letter 1700-E and their July 21, 2003 comments on the CEC's draft regulations.

The Joint Parties have noted that the CRS exemptions adopted for small clean distributed generation in the Decision expressly include systems "eligible for participation in . . . the CPUC's self-generation program." (D.03-04-030, p. 45.) Pursuant to CPUC's Self-Generation Incentive Program eligibility criteria, systems up to 1.5 MW are eligible for the Program,

although financial incentives are only offered for up to 1 MW of capacity. (D.02-02-026, Ordering Paragraphs 3 and 7.)

Notably, the CPUC adopted CRS exemptions for systems eligible for the Self-Generation Incentive Program because:

> The offering of a financial incentive clearly indicates a policy preference designed to encourage the installation of such systems. We intend to continue offering these types of systems a preference in order to encourage their installation.

(D.03-04-030, p. 45.) The Joint Parties believe it is entirely logical and reasonable for the CPUC to determine that the requirements for eligibility for this category of CRS exemptions should be the same as the Self-Generation Incentive Program on which the exemptions are based. No policy or legal basis has been articulated for differentiating -- on the basis of size -- between eligibility for the CRS exemptions and eligibility for the underlying incentive program. In fact, any such line drawing contradicts the policy discussion, cited above, supporting adoption of the Self-Generation Incentive Program CRS exemption category. The Joint Parties note that there are references in the portions of the Decision relating to this exemption category to systems under 1 MW. (D.03-04-030, p. 45, footnote 70 and Ordering Paragraph 7.) These references may be interpreted as describing the portion of any system up to 1.5 MW that is eligible for the CRS exemptions -- i.e., the first 1.0 MW is the system exempt from CRS.

As with the funding question discussed above, the CPUC has not yet issued a resolution addressing the utilities' advice letters and protests thereto and clarifying this issue. Until it does, it is premature to assume in formal regulation that the CPUC will conclude CRS exemption eligibility based on the Self-Generation Incentive Program will be limited to projects under 1 MW. Thus, the Joint Parties recommend that Proposed Section 1395.3(b)(2)(A) be revised to add "as defined by the CPUC" after the phrase "up to 1 megawatt." Clearly, this revision would be flexible enough to accommodate any CPUC determination clarifying CRS exemption eligibility based on the Self-Generation Incentive Program.

Proposed Sections 1395.3(b)(2) and (3)

The Joint Parties note that the Decision does not give the investor-owned utilities approval authority with respect to the granting of CRS Exemptions. Accordingly, the Joint Parties suggest (1) replacing the word "approve" with the word "confirm" in Proposed Section 1395.3(b)(2); and (2) replacing the word "issuance" with the word "confirmation" in Proposed Section 1395.3(b)(2).

Proposed Section 1395.3(c)(4)

The reference to the criteria outlined in Proposed Section 1395.3(c)(3) appears to be an error. The Joint Parties believe the correct reference is Section 1395.3(d).

Proposed Section 1395.3(d)

Determination of Queue Status

Proposed Section 1395.3(d) provides that customers shall be placed in the queue "based on date of Form submittal *and* technology categorization." (Emphasis added.) The Joint Parties can conceive of circumstances where the date of Form submittal and technology categorization could differ. In order to provide customers with some certainty in the queuing process, and not penalize them for any delays in confirming technology categorization, the Joint Parties recommend that Proposed Section 1395.3(d) be revised to base queue status on date of Form submittal only. Accordingly, the phrase "and technology categorization" should be deleted.

System Capacity

Proposed Section 1395.3(d) provides that the CEC shall determine whether a Partial CRS Exemption for a Customer should be included in the queue based on either "nameplate rating or estimated annual load departing." As described above, the Joint Parties believe that D.03-04-030 clearly provides that the megawatt cap applies to departing load levels. Thus, the Joint Parties recommend that placement in the queue be based solely on estimated departing load levels.

To the extent the CEC requires information regarding generating unit capacity, the Joint Parties recommend that net generating output capacity, as opposed to gross capacity or nameplate rating, be used. It is entirely possible that the net generation used to supply a customer's on-site load will be less than the generating unit's gross capacity or nameplate rating. For example, some power may be used for auxiliary purposes and, therefore, would not be considered customer generation departing load. In addition, some power may be sold back into the grid. Use of net generating output capacity would accurately reflect the power generated on-site for on-site use, and would not result in inappropriate or inaccurate allocation of capped megawatts.

The Joint Parties suggest that a similar revision be made in Proposed Section 1395.2(a)(2)(D).

Proposed Section 1395.3(d)(1)(B)

Proposed Section 1395.3(d)(1)(B) is based on the Public Utilities Code Section 353.2 definition of "ultra-clean and low-emission distributed generation". In order to be consistent with Section 353.2, the Joint Parties recommend adding the phrase "on a higher heating value" to the end of Proposed Section 1395.3(d)(1)(B).

Conclusion

The Joint Parties again emphasize that they appreciate this opportunity to provide comments on the regulations proposed to implement the portions of the Decision that address CRS exemptions for customer generation departing load customers. Based on the foregoing, the Joint Parties respectfully request that the modifications proposed herein be incorporated into the regulations.

Please contact me at the telephone number or e-mail address listed above if you have any questions regarding these comments or require additional information.

Very truly yours,

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